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December 7, 2017 **FILED UNDER SEAL**[1]

By ECF

Honorable Pamela K. Chen
U.S. District Judge, EDNY
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201-1818

Re: United States v. Napout, et al., 15 Cr. 252 (S-2)(PKC)

Dear Judge Chen:

On behalf of defendant Jose Maria Marin, we write to briefly reply to the government's letter to the Court concerning the admissibility of evidence of belief of foreign law during the trial (ECF Dkt. No. 837) ("Gov't Letter").

First, we note that the government shares our position that, should the Court permit the defendants to offer evidence of foreign law, it should not be confined to a defendant's own testimony. Gov't Letter n. 1. A defendant's right to remain silent warrants that he be allowed to provide alternative means of competent evidence if the issue is found to be a relevant one. Such evidence, of course, would include questions the defense would have asked of government witnesses with relevant knowledge of the issue. One such witness was Jose Hawilla. Mr. Hawilla's 3500 material provides a more than good faith basis to have questioned him on the subject (and as to any potential discussion of the issue with Mr. Marin). In that regard, GX 3500-JH-24(a) (from a government interview of Mr. Hawilla on November 12, 2013) states that:

> HAWILLA advised that in the United States when there is a bribe payment or kickback it is considered grave. In South America there is a division of what is public or what is private. Private is about businessmen. The government does not get involved. When TRAFFIC and other Brazilian companies engage in this behavior it

[1] The contents of this letter detail information about certain documents that have been provided by the government pursuant to the Protective Order. As these documents are not in evidence, we submit that it is necessary to file this letter under seal.

> is not serious. It is serious when public money is involved. It is not the sin that it is considered here the United States.

Id. at 1. Similarly, GX 3500-JH-26(a) (from a December 17, 2013 interview) states that "HAWILLA did not take these payments seriously because it was not public money." *Id.* at 3. Such beliefs by Hawilla would, we submit, have been elicited on cross-examination.

Beyond questioning of witnesses, other evidence (than Mr. Marin's own testimony) reflecting the fact that commercial bribery is not a crime in Brazil could be relevant to a defendant's state of mind and good faith. For example, multiple authoritative sources presently exist that confirm the fact that the crime of commercial bribery does not exist in Brazil. *See* United Nations, Conference of the States Parties to the United Nations Convention Against Corruption (2015); *Corporate Crime, Fraud and Investigations in Brazil: Overview*, available at https://1.next.westlaw.com/9-560-5405. Moreover, Mr. Marin, as an attorney, would have been particularly conscious of such issues.

Finally, the Gov't Letter again raises the concern that allowing such evidence to be admitted would open the door to it putting in evidence that defendants were "on notice that their conduct was criminal." Again, that, in our view, is fair game. Moreover, the government's statement that it would then potentially put in "articles and other reports published in the press" (Gov't Letter 2-3) furthers our point. If the government's position is that competent evidence to rebut any evidence put on by the defense would include "articles and other reports published in the press," it should be just as plain that that very same type of evidence could be used in the first place by the defendants to demonstrate exposure to the foreign law and the impact on their good faith and state of mind.

Thank you for your consideration of this matter.

Respectfully Submitted,

/s/ JAM

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cc: All Counsel of Record
(by ECF)